A FEDERAL EMPLOYEE BILL OF RIGHTS

STATEMENT BY REPRESENTATIVE JOHN M. MURPHY
BEFORE THE SUBCOMMITTEE ON EMPLOYEE BENEFITS
OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE
MAY 11, 1971

MR. CHAIRMAN:

THE LEGISLATION BEFORE THIS COMMITTEE TODAY IS OF GRAVE IMPORTANCE TO FEDERAL CIVILIAN EMPLOYEES. I HAVE INTRODUCED H.R. 234 FOR THE PURPOSE OF PROTECTING CIVILIAN EMPLOYEES OF THE EXECUTIVE BRANCH OF THE U. S. GOVERNMENT IN THE ENJOYMENT OF THEIR CONSTITUTIONAL RIGHTS AND OF PREVENTING UNWARRANTED GOVERNMENTAL INVASION OF PRIVACY.

IT MAY HAVE AN EVEN GREATER IMPORTANCE ON THE COUNTRY AS A WHOLE BECAUSE IT WILL HELP COUNTERACT THE GROWING CONCERN ON THE PART OF MANY OF OUR CITIZENS OVER "BIG BROTHER SNOOPING."

THE SENATE HAS, ON SEVERAL OCCASIONS, RECOGNIZED THE NEED FOR LEGISLATION THAT WOULD ACHIEVE THIS PURPOSE. I URGE THE COMMITTEE TO REPORT H.R. 234 FAVORABLE AND PERSONALLY PROMISE TO WORK DILIGENTLY TOWARD EARLY AFFIRMATIVE HOUSE ACTION.

AS WITNESSES APPEAR AND THEIR TESTIMONY IS HEARD, IT IS IMPORTANT TO CONSIDER THE NECESSITY FOR LEGISLATION PROTECTING THE PRIVACY RIGHTS OF THESE EMPLOYEES. AN IMMEDIATE NEED EXISTS TO ESTABLISH A STATUTORY BASIS TO ASSURE THE PRESERVATION OF CERTAIN RIGHTS AND LIBERTIES OF THOSE CITIZENS, NOW AND IN THE FUTURE, WHO ARE, OR WILL BE, EMPLOYEES OF THE GOVERNMENT.

I CONSIDER IT TO BE OF GREAT IMPORTANCE THAT THE BILL WILL ALSO HELP GET THE GOVERNMENT'S NEED TO ATTRACT - AND RETAIN - THE BEST QUALIFIED EMPLOYEES WITH THE ASSURANCE THAT THEY WILL BE TREATED FAIRLY AS PEOPLE OF HONESTY AND INTEGRITY.

THE GOVERNMENT NEEDS A VEHICLE TO PUBLICLY DEMONSTRATE ITS ATTITUDE TOWARD FAIR TREATMENT OF ITS EMPLOYEES IN THE FACE OF THE CURRENT OUTCRY BY THE PUBLIC AND THE PRESS AGAINST INTERNAL "SPYING," EAVESDROPPING, AND COERCION.

I WOULD LIKE AT THIS POINT TO MENTION INSTANCES OF CERTAIN UNCONSTITUTIONAL, IF YOU WILL, TREATMENT OF EMPLOYEES WHICH HAVE COME TO LIGHT DURING CONGRESSIONAL HEARINGS ON THIS ISSUE.

SECTION 3(b), (c), AND (d) OF MY BILL PROHIBIT REQUIRING EMPLOYEES TO SUBMIT FOR INDOCTRINATION ON SUBJECTS UNRELATED TO THEIR WORK. JOHN GRIBER, PRESIDENT OF THE AFL-CIO AFFILIATED AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES SPOKE TO THIS SUBJECT IN DESCRIBING AN INSTANCE IN THE DEFENSE DEPARTMENT WHEN AT A LARGE ARMY INSTALLATION.

THE OFFICE CHIEF CALLED MEETINGS OF DIFFERENT GROUPS OF EMPLOYEES THROUGHOUT THE DAY . . . A RECORDING WAS PLAYED

WHILE EMPLOYEES LISTENED ABOUT 30 MINUTES. IT WAS SUPPOSEDLY A SPEECH MADE AT A UNIVERSITY, WHICH WENT DEEPLY INTO THE IMPORTANCE OF INTEGRATION OF THE RACES IN THIS COUNTRY. THERE WAS A DISCUSSION OF THE UNITED NATIONS -- WHAT A GREAT THING IT WAS -- AND HOW THERE NEVER COULD BE ANOTHER WORLD WAR. . .

THIS TYPE OF "INDOCTRINATION" IS REALLY NOT TOO FAR REMOVED FROM THE SCENE IN GEORGE ORWELL'S 1984, WHEN WORKERS WERE CALLED TO THE OMNIPRESENT TELEVISION SCREEN TO LISTEN TO "FIVE MINUTES OF HATE" AGAINST THE ENEMIES OF BIG BROTHER.

EMPLOYEES RIGHTS WITH REGARD TO REPORTING OUTSIDE ACTIVITIES IS ANOTHER IMPORTANT PART OF THIS PROBLEM TO COME TO THE ATTENTION OF CONGRESS. THERE WERE NUMEROUS CASES OF AGENCIES REQUIRING THEIR EMPLOYEES TO PRODUCE LISTS OF ORGANIZATIONS IN WHICH THEY ARE MEMBERS. THE CIVIL SERVICE COMMISSION ON ITS FORM 50 FOR NON-SENSITIVE POSITIONS REQUIRES AN INDIVIDUAL TO LIST: "ORGANIZATIONS WITH WHICH AFFILIATED (PAST & PRESENT) OTHER THAN RELIGIOUS OR POLITICAL ORGANIZATIONS OR THOSE WITH RELIGIOUS OR POLITICAL AFFILIATIONS (IF NONE, SO STATE.)" I CAN THINK OF NO REASON WHY THE GOVERNMENT HAS A NEED TO KNOW IF AN EMPLOYEE BELONGS TO SUCH GROUPS AS THE PARENT TEACHERS ASSOCIATION.

PSYCHOLOGICAL INTERVIEWS AND PERSONALITY TESTS ARE BENEFICIAL UNDER CERTAIN CONTROLLED CIRCUMSTANCES. HOWEVER, THOSE CIRCUMSTANCES DEMAND DEFINITION AND LIMITATION. I HAVE SPOKEN TO PSYCHOLOGISTS -- MENTAL TESTERS, PERSONALITY TESTERS AND THE LIKE, ALL EXPERTS IN THEIR FIELDS -- AND THEY HAVE WARNED ME OF SUCH PRACTICES BY GOVERNMENT AGENCIES ESPECIALLY IF THEY ARE NOT PROPERLY CONTROLLED. THESE TESTS ARE AT BEST INDICATIONS OF PERSONALITY AT BEST. AT WORST, IN INEXPERT HANDS THEY CAN BE PHYSICALLY DETRIMENTAL TO A PROSPECTIVE EMPLOYEE, OR, IN DISTURBED HANDS BE USED AS A REFUGE BY THOSE WHO OBTAIN A PERVERTED DELIGHT OUT OF PRYING INTO THE PRIVATE LIVES OF OTHERS.

BECAUSE OF THIS, SECTION 7(e) of H.R. 254 IS DIRECTED TOWARD THE PROHIBITION OF PROGRAMS IN WHICH AGENCY OFFICIALS CONDUCT INTERVIEWS DURING WHICH THEY REQUIRE OR REQUEST APPLICANTS OR EMPLOYEES TO REVEAL INTIMATE DETAILS ABOUT THEIR HABITS, ACTS, AND ATTITUDES ON MATTERS UNRELATED TO THEIR QUALIFICATIONS AND ABILITY TO FILL A JOB. THERE IS NO JUSTIFICATION FOR THE INTERROGATION OF AN 18-YEAR-OLD COLLEGE GIRL, APPLYING FOR A SUMMER SECRETARIAL JOB, IN WHICH A DEPARTMENT INVESTIGATOR ASKED WIDE-RANGING PERSONAL QUESTIONS INCLUDING THOSE HAVING TO DO WITH HER SEXUAL RELATIONS WITH HER BOYFRIEND.

OFTEN DURING THE COURSE OF SCREENING APPLICANTS OR CONDUCTING AN INVESTIGATION

THE POLYGRAPH TECHNIQUE IS EMPLOYED. THE USE OF THIS MECHANISM IS, PERHAPS, NOT ALWAYS IN ITSELF UNFAIR. HOWEVER, IT BECOMES SO WHEN THE QUESTIONS PUT TO EMPLOYEES OR APPLICANTS GO BEYOND THE SCOPE OF INFORMATION INHERENT TO THE INTERVIEW. AGAIN, DEEPLY PERSONAL QUESTIONS WHICH SHOULD CARRY NO WEIGHT IN HIRING, PROMOTION, OR OTHER PERSONNEL ACTIONS ARE NOT ONLY PUT TO THESE PEOPLE, BUT BECOME A PART OF THEIR PERMANENT PERSONNEL FILES.

THE GOVERNMENT IS TO BE COMMENDED FOR PROVIDING A VEHICLE THROUGH WHICH EMPLOYEES MAY BUY BONDS OR MAKE CHARITABLE CONTRIBUTIONS. BUT EXCESSES HAVE BEEN REPORTED. TOO MANY AGENCIES OR SUPERVISORY PERSONNEL IN THE AGENCIES MAKE SUCH A CAMPAIGN OUT OF THE FUND DRIVES THAT EMPLOYEES FIND THEMSELVES LIABLE TO SANCTIONS IF THEY DO NOT PARTICIPATE.

THESE THREATS ARE SOMETIMES DIRECT, SOMETIMES IMPLIED, BUT ALWAYS NOXIOUS IN MY JUDGEMENT.

SECTION 3(h) OF H.R. 204 PROHIBITS COERCION OF ANY TYPE TO BE EXERTED ON EMPLOYEES FOR THESE PURPOSES.

SECTION 4 WOULD ESTABLISH A BOARD ON EMPLOYEES' RIGHTS. THE BOARD WOULD CONSIST OF THREE MEMBERS, APPOINTED BY THE PRESIDENT, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. THE BOARD WOULD HAVE THE AUTHORITY AND DUTY TO RECEIVE AND INVESTIGATE WRITTEN COMPLAINTS FROM ANY PERSON CLAIMING TO BE AFFECTED OR AGGRIEVED BY ANY VIOLATION OF THE PROVISIONS OF THIS ACT, AND TO CONDUCT A HEARING ON EACH SUCH COMPLAINT. ALL PERSONS INVOLVED WOULD BE NOTIFIED OF THE HEARINGS AND PROVIDED WITH AN OPPORTUNITY TO SPEAK. THE BOARD WOULD BE EMPOWERED TO ISSUE A REPRIMAND OR TO PROVIDE FOR SUSPENSION OF PERSONNEL IN ACCORDANCE WITH ITS DETERMINATION FOLLOWING HEARINGS OF THE GRAVITY OF THE INCURSION. PARTIES WOULD HAVE THE RIGHT OF APPEAL.

MR. CHAIRMAN, I ASK THAT YOU ALSO GIVE THOUGHT DURING THESE HEARINGS TO THOSE CITIZENS WHO ARE POTENTIAL FEDERAL EMPLOYEES AND WHO ARE TODAY THE UNKNOWING TARGETS OF SURVEILLANCE BY A VARIETY OF FEDERAL AND PRIVATE "INTELLIGENCE" GATHERERS.

FOR EXAMPLE, ONE OF THE MANY FEDERAL DEPARTMENTS WHICH HAS BEEN RECENTLY FOUND GUILTY OF INCURSIONS INTO THE CONSTITUTIONALLY PROTECTED SANCTUARIES OF INDIVIDUAL RIGHTS IS THE DEPARTMENT OF DEFENSE. A BRANCH OF THIS MASSIVE DEPARTMENT, THE ARMY, IS UNWITTINGLY ENGAGED IN THE COLLECTION AND DATA BANKING OF PERSONAL INFORMATION ABOUT CIVILIANS WHO ARE ACTIVE IN POLITICS OR WHO BELONG TO ORGANIZATIONS WHICH ARE RIGHT TO BE ACTIVE.

OVER AND ABOVE THE CONSTITUTIONAL QUESTIONS THEY RAISE, THE ARMY'S DATA BANKS HAVE IMPORTANCE IN THESE HEARINGS FOR ANOTHER REASON. THEY APPEAR TO BE PART OF A VAST

ETWORK OF INTELLIGENCE-ORIENTED SYSTEMS WHICH ARE BEING DEVELOPED THROUGHOUT ERICA BY GOVERNMENT AND BY PRIVATE INDUSTRIES. IN THOSE SYSTEMS, WHICH CONTAIN THE CORD OF THE INDIVIDUAL'S THOUGHTS, BELIEFS, HABITS, ATTITUDES, AND PERSONAL ACTIV-ITIES, THERE RESIDES A POTENTIAL FOR POLITICAL CONTROL AND FOR INTIMIDATION WHICH IS ...E TO A SOCIETY OF FREE MEN.

IN THE CHILLING VIEW OF A WASHINGTON POST EDITORIAL;

> "THESE DATA, COMPUTERIZED BY THE BRILLIANT RESOURCEFULNESS OF MODERN TECHNOLOGY, LIE WAITING LIKE BURIED BULLETS TO SHOOT DOWN A BLOSSOMING CAREER. THERE IS NOT MUCH USE IN PROTECTING GOVERNMENT EMPLOYEES FROM SNOOPING IF THE CITIZENS WHO MIGHT OTHERWISE BECOME EMPLOYEES ARE UNDER BIG BROTHER'S SURVEILLANCE. IN SUCH A SYSTEM, NO ONE KNOWS WHAT JOB OFFERS MAY BE DENIED HIM BECAUSE AT SOME TIME HE HAS BEEN UNCONVEN-TIONAL OR INDISCREET.

IN SUMMATION, MR. CHAIRMAN, MY BILL WOULD PUT STRINGENT CONTROLS OVER THE ...ILITY OF FEDERAL AGENCIES TO REQUIRE OR REQUEST ANY CIVILIAN EMPLOYEE TO PROVIDE ...ORMATION RELATIVE TO RACE, RELIGION, OR NATIONAL ORIGIN, AND PARTICIPATION IN ...IVITIES OUTSIDE THE SPHERE OF HIS JOB ACTIVITIES; OR TO SUBMIT TO INTERROGATION OR ...INATION OR PSYCHOLOGICAL TESTS CONCERNING HIS RELIGIOUS BELIEFS OR PRACTICES, OR ...CERNING HIS ATTITUDE OR CONDUCT WITH RESPECT TO SEXUAL MATTERS, OR TO TAKE POLY-...PH TESTS; AND, FINALLY, THE BILL WOULD ESTABLISH A BOARD ON EMPLOYEES' RIGHTS TO ...LE EMPLOYEE COMPLAINTS AGAINST THE GOVERNMENT.

THE BILL HAS BEEN DRAFTED SO AS NOT TO ENDANGER, IN ANY MANNER, THE NATIONAL ...URITY, THE SOLE OBJECTIVE IS TO PROVIDE FOR THE PRIVACY RIGHTS OF U.S. GOVERNMENT ...PLOYEES.

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Mr. Henley. It is our privilege now to call upon our next witness, Senator Sam J. Ervin, Jr., of North Carolina.

Senator, it is indeed a pleasure to have you with us. We look upon you as the dean of Congress, and many ears will be turned in to what you have to offer this morning.

STATEMENT OF THE HONORABLE SAM J. ERVIN, JR., UNITED STATES SENATOR FROM THE STATE OF NORTH CAROLINA.

Senator Ervin. Thank you, Mr. Chairman.

I want to associate myself with the testimony which has thus far been given. I do not believe it would be possible to make a finer exposition of the necessities and advisability of such a bill than that made by Representative Wilson in his remarks.

It was stated by Representative Wilson that all legislation is a result of compromise, and I might state, since I began working in this field, that there have been about fifty or sixty compromises. I have received every protest that was made by the agencies and departments. And I might state that they made quite many protests, because those who exercise or have the power to exercise petty tyranny over their subordinates are very reluctant to have those powers taken away. But I listened patiently to what they had to say; and I think every valid objection as to matters included in this bill has been acted

thing is a kind of very

to regulate the entire relationship between the agencies and departments of the Federal Government and their employees. It only attempts to protect the employees from certain coercive actions of their superiors.

And we did not include the Legislative Branch of the Government because I have never received any complaints from Congressmen abuse their staffs. And that is a fundamental difference I have observed all through my adult life between those people who are dependent upon the elective process for obtaining their office and those who obtain office without the elective process.

For example, I think a Congressman ought to be allowed the right to require a certain amount of political activity on the part of his staff. I think that he ought to be allowed, perhaps, to take into consideration the ethnic origin of members of his staff, if he lives in a somewhat mixed area from an ethnic standpoint. And I think that even to a certain extent he may be allowed to have the privilege, if he wants to exercise political, of taking into consideration even the religious beliefs of his employees and what their reputation is with respect to sexual matters.

I do not think there is any occasion whatever to apply this to the Legislative Branch of the Government.

As I stated, the bill is very limited in scope.

What it does, it is prohibition on executive agencies and departments. It does not attempt to require, really, any affirmative conduct on their part. It does not interfere in any way with their employment practices; it does not interfere in any way with their right to define the official duties of their employees. It merely undertakes to protect the employees against things which prevent a government employee, when outside of the scope of his employment, from losing the rights which belong to every other American citizen. In other words, it attempts to put the employee on the same plane as far as his individual rights are concerned, that all other Americans enjoy, subject only to his obligation to perform his official duties in an efficient and a loyal manner.

Now, for example, Section 2(a) prohibits an agency or department of the executive government from requiring an employee to answer questions about his race, religion, or national origin, or the race, religion, and national origin of his forebears. He has got to provide those to take care of all objections that are raised. It permits these inquiries where the person's citizenship is a prerequisite of his employment or where these investigatory agencies find it necessary to inquire of those matters in order to determine the fitness of the man for service in the CIA in a foreign country, for example. So we took care of those objections.

Subsections (b), (c) and (d) intend to have a new [illegible]

being required by his superiors to attend government sponsored meetings or lectures, or participate in outside activities unrelated to his [illegible], to report on his outside activities unrelated to his work. We found, after very extensive investigations, that the government was requiring their employees to attend lectures which were purely brainwashing lectures to indoctrinate the employee about the government's policies in very many respects.

For example, we had a directive issued by the Treasury agency requiring them to go before town boards in the places they live to adopt certain ordinances, to appear before school boards and try to get certain things in the curriculum, even to aid the beautification program, because they had been told about reaching in their own pockets and buying grass seeds and flower seeds and paint brushes and paints to persuade people to paint their houses.

I notice that all these have said that no supervisor shall require or request. That was put in there because of what I read in the Infantry Drill regulations many, many years ago. It says: "Request of a superior, equivalent to command."

When we had Mr. John W. Macy, then Chairman of the Civil Service Commission for the Senate Subcommittee on Constitutional Rights, he said: "These things are just requests." I told him that when I was in the Army many years ago, I read one sentence in the Infantry Drill regulations which impressed

itself upon my mind and that was: "Request of a superior, equivalent to command." I said to him: "To test the validity on you, I point out to you the fact that you already know you are a member of the Executive Branch of the government," and to him that was the President of the United States. I said: "If the President of the United States makes a request of you, do you not consider it to be a command?" He said: "Well, since you put it in that fashion, I will have to concede that I do."

This provides that they shall not question employees or applicants for employment in three areas; that is, in their relationship to people near and dear to them, in the attitude towards matters of sex, or the attitude towards matters of religion.

We found many questions. We had hearings. We had, for example, a man who informed us that he applied for a job with the NSA. They picked him up at Fort Meade, I think in Maryland, and subjected him to a lie detector test, in which they asked him whether he had had sexual intercourse with his wife before he was married to her, and how many times.

We had an 18 year old girl, a daughter of an Army colonel, who came up here for summer employment, and they asked her whether she was pregnant, whether she had had an affair with her boyfriend, or whether he tried to do anything unnatural to her.

The record of the hearings is complete as far as the

evidence on these matters is concerned, but for some strange reason they do seem to have an insatiable curiosity about matters of sex. This provides that if they have a specific charge -- of course, it would not affect where a person was indicted for a sexual crime -- it will be noted that this phase of it is all related to questions that are asked the employee or the applicant for employment. It does not preclude the agency or the department from obtaining information about these matters from any other available source on earth, and it provides that where they have psychiatric treatment, that a psychiatrist can ask these questions.

Certainly, we have a multitude of psychological tests that were permitted of government employees, in which they asked people to evaluate their own parents or their husbands or their wives. They were asked about sexual attitudes, about matters of religion. Incidentally, sometimes I think that the bureaucrats are like the Bourbons. They learn nothing.

After we had had these extensive hearings held, a short time ago it cropped up that one of the agencies under the Department of Defense was asking their people, their employees, urging them to engage in outside activities, asking them whether they belonged to certain civic clubs like Kiwanis, the Rotary Club, and whether they belonged to churches.

I submit that that is none of the government's business.

I called that to the attention of the Department of Defense,

and they said that an overzealous person had overstepped legitimate bounds in regard to those questions.

We have a prohibition in coercion. Incidentally, I would like to offer a copy of my bill, which is very similar to the other bills, for the record. We took care of all objections raised to this bill in these provisos in each case.

We prohibited coercing people into buying government bonds. We had many protests of that conduct on the part of the government. In various agencies and in their subdivisions, they would pressure the people to come up with the money, regardless of their financial condition. They had a bond sale here one time, and they posted notices and issued cards out at Andrews Air Force Base, for their civilian employees at the hospital, and they had to mark on the card one of three check-points. The first one stated in substance: "I am now purchasing government bonds, but will step up my purchase of government bonds." The second said: "I am not now purchasing government bonds, but I will immediately begin to purchase government bonds." The third one said: "I am unwilling to accept my fair share of the responsibility for assisting the President to make this a success."

I had one of my constituents out in the State of California, who was a retired Major in the Army. He wrote me a letter to the effect that he was then a civilian employee. He had retired and was a civilian employee under an Army Colonel. The Army

Colonel gave him a direct quota of how much he had to buy in bonds. He advised the Colonel that he had several children he was trying to educate in college. He had an invalid mother, and he was not financially able to do this. The Colonel told him that if he did not do it he would live to regret it. He did not buy the bonds, and then the Colonel posted the bulletin on the boards throughout the area that said: "Our bond drive would have been a 100 percent success had it not been for so-and so and so-and-so," and they listed those who did not participate.

They can acquaint the government employees about the fact that the bond drive is on; they can give him more opportunity to voluntarily purchase bonds. All it does is prohibit a Federal employee from being coerced into purchasing bonds against his will.

It is also true that it has the same application to efforts to make people make charitable contributions. When they have a drive for charitable contributions, the government agencies, the departments, take a certain quota; then they assign quotas to each one of their divisions, and on down through each group of employees. These people are pressured in no uncertain way to subscribe to charitable causes. Many of these causes are worthwhile, but whether it is a government employee or a private citizen who is going to make a charitable contribution, it is a matter for his determination and not a matter for the determination of his supervisor.

We had a great deal of trouble finally getting the phraseology to suit everybody with respect to this question of the conflict of interest. A few years ago, President Johnson issued a directive about conflict of interest. One of the troubles is that when you start in a certain direction in a governmental way -- also in private activities sometimes -- you go the whole extreme. When this directive about conflict of interest was issued by President Johnson, it was estimated that perhaps anywhere from 3,000 to 6,000 employees might have to answer it.

I kept track of it for a while, and after it had been in effect for over a few months, over 175,000 Federal employees were required to file a conflict of interest statement; that is, statements showing what they possessed. It even required the members of the family who lived with them to file such statements in some instances.

A member of the Department of Agriculture had to fill in a statement. He was a raisin inspector. I think he was a 3G man whose purpose was to inspect raisins to see whether they came up to food standards. I asked them why they required this. They said: "We want to find out whether he is engaged in the processing of grapes into raisins or whether he is interested in the wholesale status of selling raisins." I said: "Why didn't you ask him that?" and they said: "On second thoughts, that would be more appropriate."

Some of these questions require a man to enumerate all the

socks and neck-ties he owns, and the brother-in-law who lives in the house is also required to fill in this.

This bill would prohibit requiring financial statements from government employees, except in those cases where the possessions of the particular employee present a possible conflict of interest in respect to the duties he is assigned to perform. In that case, this bill permits the requirement of the disclosure of any assets which might tend to establish a conflict of interest.

I think that virtually every complaint that has been made against this bill has been rewritten five or six or seven times.

This bill provides that any person who is subject to possible disciplinary action, shall be allowed to have a friend or counsel accompany him. The CIA has made many protests against this bill. The truth of it is that the CIA does not want to have any limitations whatever upon its unlimited authority. I recognize that in your investigatory agencies you necessarily have to have some leeway that you do not have in other agencies. At the instance of the CIA -- we had them before our Committee with Senator Bayh, who took that position and put it strongly, acting as an intermediary -- we rewrote all of the sections of this bill to make certain that the CIA could not possibly suffer any prejudice. We made the same thing apply to the NSA.

My bill does not apply to the FBI, for two reasons. At

the time the bill was drafted, it originally applied to the FBI. Sometimes you have to change your sail to suit political winds, and the FBI had a lot of support in the Senate Judiciary Committee, and I had some doubt whether I could get my bill out. I got it out with the CIA in it, but when it struck the floor of the Senate it was amended so as to eliminate the FBI.

Up to that time, I had virtually no complaints of the FBI violating the provisions of this bill, because the FBI does not resort to those personality tests; it does not resort to lie detector tests. Like the CIA and the NSA, it has virtually unlimited authority in respect to its hiring and discharge of its employees.

As far as I am concerned, I have no objection to covering any agency of the government, except I do not think the Legislative Branch needs to, and I think that is quite a different situation. At the request of the CIA, I provided that a man can even pick his own attorney or his own friend to accompany him when his conduct his under investigation by his superiors. It says he must pick a man from the CIA or he must get an attorney that the CIA approves of. This is the only time in history that it is required to say a man cannot select his own attorney without first getting the approval of his attorney by the person who is in the nature of his adversary, but I have done that with the CIA.

There are two remedies under this statute. One is that

the aggrieved employee can go into the Federal Court and seek a remedy if he feels he has had his rights violated, or he can go before a board of authority. This provides that in any investigation affecting either of these two security agencies -- the CIA or the NSA -- the personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) -- that is the section that gives the man the right to have a counsel -- or in any civil action under section 4 or in any proceeding or civil action under section 5.

The Board has got special provision to protect. For the CIA or NSA, before the employee can bring any kind of proceeding, he must file the complaint with the agency and give them 120 days to conduct a hearing on that matter before he can seek relief otherwise.

I cannot see where the CIA or the National Security Agency will be limited in any way in the performance of their necessary duties to protect the national security by anything in this bill. It does undertake to say that even where they do not claim themselves the national security is affected, that they can be compelled to treat their employees with the same respect and consideration as other agencies and departments of the government are concerned.

The Chairman asked a question of Representative Wilson about whether it would be desirable to amend the bill and require exhaustion of administrative procedures before the employee could resort to the courts or could resort to the board. We gave serious consideration to that and decided that was not advisable because the evidence indicated that as far as getting redress at the hands of the agencies, justice travelled on leaden feet.

We handled that situation by providing this on page 20: "That if under the procedures established, the employee or applicant has obtained complete protection" -- in other words, we have got a provision here that any agency can set up its own grievance procedures -- "against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights." Then it provides that if an employee elects to seek a remedy by way of the courts or by way of the Employee Rights, he waives his right to proceed by an independent action.

I have prepared a statement and I will only read a part of the statement, but would like to have the entire statement printed in the record.

Mr. Hanley. Without objection, it is so ordered.

Senator Ervin. I appreciate the opportunity to come register my support for the proposals before this Committee

to protect the constitutional rights of executive branch employees and prevent unwarranted governmental invasions of their privacy.

There has been a serious need for such a law for many years. With the recent growth of the Federal Government and the unprecedented extension of its powers, its attitudes toward its employees will affect the lives and privacy of more Americans than ever before in our history.

There are some outrageous invasions of individual privacy and violations of rights which take place today. Many of them are sanctioned by government and powerful private economic interests.

The individual, even a member of Congress, has few enough chances to challenge or halt many of these. I believe my privacy bill offers every member of Congress an immediate chance to halt some of the privacy invasions. Fifty-one members of the Senate have co-sponsored the bill as S.1438 this year. In the last Congress, the Senate passed it by unanimous consent. In the 90th Congress, the Senate passed it with a 79 to 4 vote, and, counting abstentees, with the total approval of 90 members.

The bipartisan support for the bill is illustrated in its continuous sponsorship by Democrats and Republicans of all persuasions. In policy statements during the last Presidential campaign, the candidates of both major parties strongly supported new protections for the constitutional rights of Federal

employees and guarantees against unwarranted invasions of their personal privacy. The Democratic candidate wisely promised legislation based on the findings of the Senate Constitutional Rights Subcommittee and other congressional committees.

Platforms of both major parties acknowledge the privacy problem. In its platform, the Republican Party stated: "The increasing government intrusion into the privacy of its employees and of citizens in general is intolerable. All such snooping, meddling and pressure by the federal government on its employees and other citizens will be stopped and such employees, whether or not union members, will be provided a prompt and fair method of settling their grievances."

Time is running out for fulfillment of these campaign promises. I would like to see this Administration remove the blinders it inherited, and give this employee privacy bill top priority on its list of "must-have" laws.

I first introduced a similar bill in 1966 when it became apparent that executive branch politics were working to deprive people who worked for government of basic rights which belonged to them under the First Amendment to the Constitution.

They were being compelled to reveal things about themselves which, under the merit system, the government had no business asking. They were told to fill in computer-punched cards with their race, and national origin, added to their name and social security numbers.

On pain of losing their jobs, employees were told at all grade levels to respond to broad inquiries about the way they handled their personal and family finances, and how their relatives spent their own money.

On pain of not getting a job, or a promotion, or a clearance, people were being subjected to extensive questions about their religious beliefs and practices, such as whether they believed in God, or the second coming of Christ, or how often they read the Bible.

They were submitted to questions about personal family relationships, such as whether or not they loved their mother or hated their father, and whether or not they enjoyed "sweet and peaceful family relationships."

They were solicited for responses to questions about their sexual attitudes and conduct, such as whether or not they "petted", how often they had intercourse and with whom, whether or not they took birth control pills, whether they dreamed about sex matters, and many other intimate details which were none of the business of government to demand from its employees and applicants.

I know of nothing in the Constitution which authorizes Federal officials to use economic sanctions to make such inquiries of citizens, regardless of the stated purpose. Such inquiries cropped up time and time again with different justifications from officials. National security, emotional

stability, mental health, ethical and moral conduct were among the reasons given. I believe a study of the reasons for the First Amendment and Fifth Amendment and of the Supreme Court decisions on them will demonstrate that such questions are unauthorized for the purpose and that they have no substantial relevance to the purpose of government. Yet such outrageous inquiries were and are put to people by questionnaires, interviews, and lie-detector machines.

(BALANCE OF STATEMENT FOLLOWS)

We found that the government was pursuing some other inquiries and investigations which were none of its business. In the interest of furthering Administration equal employment goals, its beautification program and other social, political and economic plans, employees were told in regulations, and verbally, to go out and use their own time to lobby for open housing legislation and municipal ordinances on civil rights, to work in ghettoes, paint fences, buy grass seed, support the Urban League and the NAACP, and to engage in many other suggested community activities.

They were then told to report back to their supervisors what they had done. When one large group of employees asked what would happen if they did not do such things, they were told they would be considered uncooperative and that their personnel files would reflect their attitudes.

Under our Constitution, it seemed to me that a man can certainly decide for himself whether he wants to be politically or socially active in his community. If he wants to be silent and do nothing at all, that is his business. There is nothing in the Constitution saying that just because he works for government he should have to report to his supervisor that he prefers to go fishing on Saturday instead of demonstrating for a government-supported cause.

Yet apparently, this is the word passed from the White House by its civil rights executive order to the Civil Service Commission and down to the department and agency officials all over the country.

Apparently, too, things have not changed all that much. The Subcommittee on Constitutional Rights received complaints that some employees were "urged" to take part in Veterans Day activities to show their support for the Administration.

A recent press release issued by the Civil Service Commission, and I give it here, states that "a new program to facilitate voluntary service by Federal employees has been launched by the Civil Service Commission Chairman in support of the President's program to strengthen voluntary activity in the United States." It further stated:

> "Based on experience in a model developed in the Washington area by the Civil Service Commission, Chairman Hampton has urged Federal Executive Boards and Federal Executive Associations throughout the country to develop similar methods for matching the volunteer needs in the community with the skills of Federal employees willing to volunteer their services. He suggested that appropriate Federal officials in local communities contact local Health and Welfare Councils and explore with them the needs for volunteer service and then get the word to Federal employees in the area about the services needed. He further suggested the establishment of a separate office manned by volunteers which would list the volunteer openings and match them against the Federal employees who indicated a willingness to serve.
>
> "The experimental project in the Washington area has been highly successful. In a period of 3 months, approximately 300 Federal employees accepted volunteer assignments from 109 different voluntary agencies. These were in urban service centers, community schools, hospitals, and playgrounds and included, among other things, tutoring, teaching arts and drama, community action, services to handicapped, sports and recreation, and services to children. The Federal employees came from 60 different Federal agencies.
>
> ... Expanding this idea to other communities will give the charitable agencies much needed voluntary manpower, Chairman Hampton said. Federal Executive Boards are located in 25 large metropolitan areas. . . Extension of the Washington model to other communities was carried out in cooperation with the Office of Voluntary Action, the staff arm of the Cabinet Committee on Voluntary Action established by President Nixon last May."

It is too soon to tell how this new Commission program will work out, but it seems they would have learned the lessons of the past. They have also failed to recognize the truth I learned in the infantry from World War I: That a request from a superior is equivalent to a command.

One example of the implementation of such a program came to my attention through Mr. Griner of the American Federation of Government Employees. Defense Supply Agency employees at Rough and Ready Island in California were given a "Community Relations Questionnaire" which asked whether the employee is a member of service groups, such as Kiwanis, Rotary and others; whether he is a member of educational, civil or similar community committees, such as Chambers of Commerce, and others; whether he is a member of professional associations or organizations and which ones; and whether he has membership in local PTA's and churches. I concluded from this that the agency had some "Rough and Ready" policies.

The questionnaire states at the bottom that it is "required to be returned to your supervisor not later than the close of business 3 December 1970."

I sent a letter inquiring about any departmental directives authorizing such questionnaires and received a reply from the staff director of Civilian Personnel telling the Subcommittee that "the participation of Defense Supply Agency employees, as individuals, in community activities is recognized as an important factor in sustaining mutual acceptance, respect, cooperation and an appreciation by the agency personnel and community affected by their operations." He said that the questionnaire resulted from a "well intentioned but imperfectly communicated desire by the public affairs officer to guage the approximate extent of community activities based upon information voluntarily provided by employees." He further stated, "The questionnaire was distributed with verbal instructions that its completion was voluntary on the part of the employee, whereas the questionnaire itself stated it was required to be turned in."

It seems that in a recent communication to the Secretary of Defense, General Hedlund had identified as a management challenge "Learning to recognize and understand growing individualism and activism in today's society as these relate to personnel management." The General's word had become an order.

When he heard these complaints, this personnel officer attempted to perform his duty. He issued a directive telling supervisors to be careful about their expression of interest in non-work matters and to encourage their staffs always "to be concerned with preventing such misunderstandings by limiting employee inquiries, written or oral, to matters clearly connected with the employee's work."

It is hard for me to see how personnel officers and supervisors can follow this rule of reason when their political superiors have made it clear they are to do just the opposite. There is no way to avoid such wholesale inquiries into the employee's private life as long as the government makes clear its desire that he go out and support programs and policies which it endorses.

We also found that employees were ordered to attend meetings called or sponsored by their agencies or supervisors in order to guide their thinking on sociological and political issues which had nothing to do with their jobs.

With one complaint of such attempted indoctrination of employees at a Federal installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending or not attending.

To my mind, such programs constituted official intimidation of citizens to conform their thinking on public issues to those of the Administration.

I found nothing in the Constitution which authorized officials of the employee's department to require attendance at such brain-washing sessions held under the auspices of the government. Nor were they authorized under the Constitution to take note of attendance at government-sponsored or government-endorsed meetings and lectures.

Here again, there is no sign that things have changed very much in the Federal Service. For example, our Subcommittee has received many employee complaints about the sensitivity-sessions they are required to attend to change their "cultural attitudes and behavior" on racial issues, equal rights for women and the role of minority groups. I am told this is being done under the equal employment order issued by President Johnson to promote civil rights in government. In these out-of-town meetings run by psychologists and other behavioral scientists, people are subjected to emotionally-charged situations deliberately staged to manipulate and provoke human emotions in sensitive matters of the intellect and personality.

The reports received from employees and other members of Congress about the way HEW programs were operating were so disturbing that I asked Secretary Richardson to investigate the matter and suspend the sessions pending his report. I also asked him to answer some simple questions so I and other members could advise employees of their rights, since these people could get no answers from their supervisors.

That was on March 19, and to date, the Subcommittee has received no reply from the Department.

In relaying these complaints, I also informed the Secretary,

> "It has become clear from the complaints by responsible employees, from reports by acknowledgeable experts in the fields of labor-management relations and from psychiatrists, psychologists

and specialists in human-relations, as well as from my own studies of this matter, that this program goes far beyond the needs of personnel training in any department or agency of government.

On the basis of my own investigation, I am convinced that the scope of this program and the techniques used in some of the sessions amount to economic coercion of the individual to submit to official attempts to control his thoughts and emotions in ways completely uncalled for in the employment relationship. However useful such techniques may be for treating psychiatric problems in private practice on a voluntary basis, it is not the business of government to inflict them on its employees.

The Subcommittee study has amply demonstrated the need for more governmental recognition of the constitutional rights which employees possess as citizens. No one, therefore, can fault a management training program to teach better understanding of management duties and to develop the ability to deal with the human relations aspect of a job. However, there are well-established methods of instilling and teaching the principles and personnel techniques involved in such duties. It is tyranny over the mind of the grossest sort to subject employees to a probe of their psyches, to provoke or even require disclosure of their intimate attitudes and beliefs.

Even the soundest professional supporters of such techniques have emphasized the need for voluntary, enthusiastic participation by the individual. From the reports received by the Subcommittee, it appears that there is not even a gesture toward voluntarism in the government programs. Rather, employees have been ordered to leave their homes and families at some hardship and live for a period in seclusion with fellow employees and supervisors, while being subject to psychological encounter sessions. People who protest have been given the option of refusing to disobey an order or of requesting an exemption on psychiatric or emotional grounds."

An Agriculture employee writes: "During our two and a half day session on Civil Rights, we were subjected to hearing lectures, speeches, stories, songs or what have you which in many instances were full of foul language even to the point of being vulgar (morally crude, offensive, earthy, profane) and obscene (disgusting to the senses, repulsive)."

Other employees of that Department wrote about being required to watch films and to listen to tape recordings of speeches by Dick Gregory and other civil rights activists stressing how whites were hated and what these people were going to do about it. Clearly, such sessions intrude on First Amendment freedoms, and just as clearly, as these letters demonstrate, they are counter-productive for the Administration's purposes.

There are many other ways Government attempts to intimidate the private thoughts and behavior of people who work for it.

One of the most serious, however, is the economic coercion of those citizens to invest their money in U.S. Savings Bonds, or to donate to

charitable causes. Congress has received many reports of black-listing, reprisals, threats of loss of security clearances, and other official adverse actions because employees wanted to make their own decisions about how they donated or invested their earnings. It is a long, unpleasant, and often unproductive route for employees to appeal such actions or for Congress to investigate them. The many cases received by the Subcommittee proved the need for a plain statement in the law that such coercion of a person's freedom of thought and action is prohibited.

Enforcement Machinery

On the basis of complaints on these and many other privacy invasions, it was clear to me and the cosponsors of this proposal that the law fails fully to protect the rights of citizens who work for government. It is sometimes impossible for him to challenge unconstitutional governmental programs or unconstitutional demands on him for information. He is without the legal statutory right to have counsel or someone else with him if he wishes in sessions which may result in disciplinary actions. He is denied or inhibited from pursuing any administrative remedies. He is refused access to the courts under laws and judicial decisions which would leave such programs to the discretion of the executive branch.

So, in addition to simple prohibitions on unconstitutional actions of government, my bill also: establishes certain enforcement machinery which includes a right to counsel in certain cases, a Board on Employee Rights where an applicant or employee may obtain a hearing and action on complaints arising under this Act; and it affords access to the Federal District Court in cases arising under this Act.

This bill to protect employee privacy has had widespread public and editorial support throughout the nation as well as support from employee unions and organizations. In fact, with few exceptions, the only people who seem against it are those whose power would be limited by it.

Despite the widespread public and congressional support, one would have thought that with this bill I sought to introduce the bubonic plague into the Federal Service rather than the rule of law. Officials in the previous administration fought this simple proposal with every resource at its command.

...y conjured up incredible legal ghosts in an attempt to influence the ...nformed or intimidate the faint of heart. However much they vowed to ...ter administrative machinery or to change governmental attitudes, it was ...ear that they had closed their eyes and their minds to the real need for ...ws on the books to protect the First Amendment rights of citizens.

I do not think anyone should be misled about the purpose of this bill. ...o hear some describe it, all of the ills which beset the Federal Service ...ill be cured by passage of the bill. Others have seized on it as the ...bodiment of all of the forces of Beelzebub.

It should be understood that my proposal does no more and no less than ...hat it states in plain English, so that every political executive in the ...ederal Government will have notice of the constitutional limits of his ...ower in certain specified matters. It leaves untouched the vast investi-...gatory apparatus of the government. It leaves untouched the many conflict ...f interest laws, the ethical conduct codes and all the other laws under which ...mployees are investigated, and often fired, by the Civil Service Commission, the ...BI, and their departments, for determining their fitness for duty or their ...iolation of the criminal laws or the violation of orders relating to their ...obs.

During the five years we have worked with the bill in the Constitutional ...ights Subcommittee, it has been subjected to careful refinement and amendment ...o meet any legitimate objections. These are listed in the committee report, ...o. 91-873, which I have provided to the members of this committee.

In the version passed by the Senate last year and which I have reintroduced, ...he Federal Bureau of Investigation is exempted and there are certain carefully-...rawn exceptions for the two security agencies, the Central Intelligence ...gency and the National Security Agency. These exceptions in S. 782 of last ...ear were in addition to those contained in the bill which first passed the ...enate in 1967 as S. 1035.

I have not attempted to describe all of the features of the bill, but ...ill offer for the record a legislative analysis of it and several memoranda ...elating to it.

My sponsorship of this legislation does not imply to a belief that there would be a law on everything the executive branch should not do to its employees. There are many things done in the name of worthy purposes which are foolish, tyrannical, repressive, or self-defeating. But they do not necessarily violate the Constitution. Nor can Congress legislate against all manner of fools and their follies.

It can and should legislate to protect the freedom of the mind which is guaranteed all citizens under the First Amendment whether they work for government or not.

Individuals should know that they have a legal remedy when economic coercion is used to compel them to speak, think or act against their will in favor of government causes, or about personal matters which are none of the business of government.

The need for such a remedy is underlined by the directives I have seen recently prohibiting employees from contacting personnel offices and supervisors who could take action on problems.

It is underlined by the written and verbal "gag-rules" ordering employees not to tell Congress about their problems and, in some cases, even not to contact members of Congress without reporting it to their supervisors.

Nor can employee unions and organizations completely protect against such complaints, although within their limited resources, they have been increasingly active in protecting privacy. In this connection I am reminded of the union concern in the last Congress when a Pentagon personnel official warned unions against going to the press or to Congress with their grievances. Furthermore, not all employees and applicants are members of unions nor should they be required to join to assure their First Amendment right to privacy.

Nor does the remedy rest with the Civil Service Commission. Their attitude toward privacy is revealed by their response to my inquiry about piped-in music. After receiving complaints about this subject, I asked the Commission what grievance channels were available to employees who resented having to work by piped-in-music, some of it raucous "hill-billy" or jazz. Without expressing any opinion on the matter, I asked whether any rules existed whereby an agency could involve its employees in the decision about whether to use it and in the choice of music. The Commission sent me a long

letter arguing that the Supreme Court has held there is no constitutional right to be free of music on buses and that people had to get used to the sounds of daily living, whether they are in the city or the country.

Undreamed of privacy invasions are being made possible or furthered by great computer systems, by the new technology with all its sophisticated devices and instruments. Some of these raise constitutional issues. Some do not.

The time has come, I believe, for Congress to consider establishing a tribunal independent of the Civil Service Commission, to hear and judge the many complaints of violation of privacy rights of employees.

The Civil Service Commission was created to be the handmaiden of the Chief Executive and to pursue his mandates in the general management of the Federal Service. Its staff have an unbelievable burden to carry to assure the responsible and efficient operation of the Federal Service. Too often, constitutional any/rights employees possess have been administered and implemented by the Commission, and the energy and zeal behind them has come from the good will and good faith of Commission members dependent on staffing, time and resources. The impetus for their enforcement often stems from political pressure with help from the courts.

We live in a government of laws, not of men. The constitutional rights of citizens, even those who work for the Federal Government, should depend on laws, not executive orders; on the application of due process of law, not on the grace of the Civil Service Commission.

This is not a new idea, but one which may have new urgency with the new employee problems. I think it bears exploration.

But I do not see such a body or any other laws as alternatives to passage of the employee privacy legislation before you.

I therefore urge the immediate enactment of that legislation, unencumbered, undiluted, and in the form twice passed by the Senate.

Senator Ervin. I would like to say something about a lie-detector. I had the privilege to serve as Superior Judge in North Carolina. I had one case in which murder was charged, and there was an effort by the prosecution to offer in evidence what they alleged was a lie-detector test. I studied the subject and I found there is not a single court in the United States that admits a lie-detector in evidence. I think the lie-detector, the polygraph machine, is witchcraft and nothing else.

A brazen liar could pass a lie-detector test without any difficulty. A nervous man who is not resilient in certain questions would likely fail it. It acts only on the basis of physiological and psychological reactions, and they are very unreliable. The Encyclopedia Britannica says a man may have a rise of 75 points in his blood pressure merely by taking an examination for life insurance policy.

In addition to the recordings of the machine not being reliable, they depend on a person to interpret them. These people have very little experience; they are not psychiatrists; they are not psychologists, and for that reason they are subject to misinterpretation.

This allows the use of lie-detector tests, psychological tests; everything except these three classes of situations; that is, attitude to matters of sex, matters of religion, and the relation to a person's family.

A question was asked about this very remarkable document, which I received from a government employee in a department which I do not know that I am at liberty to disclose. He informed me that it was used in two departments of government. I asked these two departments whether they used them and they promptly denied it. I do not know why somebody would go to the trouble of coding a thing like that for insertion in a computer unless it is genuine. That is not the first time I have received a denial from the government.

Christopher Pile wrote a magazine article in January of 1970, in which he exposed the Army spying upon civilians. The Army denied it. When I read a letter last November from John O'Brien, a former military intelligence agent, stating that over 800 persons in organizations, including a United States Senator and a member of the House of Representatives, had been under surveillance by military intelligence group No. 111 in Chicago, that was denied also.

I remember a few years ago, when the U-2 was shot down over Russia, our Executive Branch of the government denied any U-2s were spying. I have to say that I have a very low opinion of the veracity of some of the executive agencies and departments when it comes to replying to questions which deal with some of their follies and mistakes. I can understand why they use this substitute for the Fifth Amendment; namely, executive privilege, to protect themselves.

This personality evaluation is in complete line with many of the psychological tests which were admittedly given by various agencies of the government and which were thoroughly investigated, not only by one of the House committees, but also by the Senate Subcommittee on Constitutional Rights.

They had some marvellous questions. One of them was: "When you attempt to deceive anybody, do you look them square in the eye? Do you avert your eyes, or do you adopt some other procedure?"

I have been concerned with this for so long, and I have a great deal of renewed hope for its enactment because of the interest which many House members have. I do not have any doubt about the ability to get the bill through the Senate because we have more than a majority on this particular bill. A question has been suggested by members of the committee, and also by Representative Wilson, that most legislation is a result of compromise. It is stated that I have set this bill to compromise in an effort to take care of every legitimate complaint that has been made against it. As I said before, I do not know of anybody opposed to this bill, except those who have the power to practice petty tyrannies. All the government employees are squarely behind it, and I think that the overwhelming majority of both Houses of Congress support the bill.

I do not want to be accused of ignoring time, so I will cease, except to try to answer any questions.

Mr. Hanley. Senator, as we had anticipated, your testimony here this morning has been very interesting, very informative, and certainly up to this point has provided all of the members of this subcommittee with perhaps considerable more background than we had had. I speak for myself, anyway, in this regard.

Back in 1966, that was when you originally introduced legislation dealing with this problem?

Senator Ervin. Yes.

Mr. Hanley. I assume that probably your motivation at that time was a result of complaints from Federal employees who felt that their constitutional rights had been violated? Would that have been the motivation?

Senator Ervin. Yes. I started studying this problem before that, because as Chairman of the Senate Subcommittee on Constitutional Rights, we received almost thousands of complaints each year from people who felt they had been aggrieved. We started receiving untold complaints from Federal employees, many of whom were reluctant to disclose their identity for fear of reprisals. They felt this questionnaire about ethnic origin destroyed the concept of the Civil Service. They felt that people should be employed by the government solely upon the basis of their qualifications, so they protested.

After this directive was issued by the President on the [illegible] a great

many more complaints. Then there were efforts made to coerce Federal employees to engage, in their outside time, in the promotion of policies of the then Administration, and that brought forth innumerable complaints.

Mr. Hanley. Judging from the success the legislation has had in the Senate, appropriately most members of the Senate have been the recipients of a great number of complaints, as you have. Your batting average over there has certainly been excellent in this regard.

For the record, without objection, the language of the Senator's bill will be contained in the hearing record.

(COMMITTEE INSERT.)

Mr. Hanley. You made reference to an individual who came to you subsequent to an interview at NSA. Apparently, the gentleman was disgruntled, and I can only assume that he was not hired by that agency?

Senator Ervin. No. He said that after he had had that experience, he had no desire to be employed by the NSA.

Mr. Hanley. Did he advise the agency that he was no longer interested at that time?

Senator Ervin. He said he took it up with the one who was giving the polygraph test, and he said: "We make everybody submit such a test, anybody who applies for employment." I hope they saw the curtail as a result of some of these things.

Mr. Hanley. In recognition of your obvious expertise, lie-detector versus polygraph, what is the difference?

Senator Ervin. They are the same thing.

Mr. Hanley. I was advised by one of the agencies that they did not use lie-detectors, and for that reason a question arose in my mind. You have answered it.

Congressman Matsunaga made reference to a 53 question questionnaire circulated by one of the agencies, dealing with with some rather personal questions. Do you have that, by chance? Could it be made available?

Senator Ervin. I have a copy in my files over in my office.

Mr. Hanley. Could you make a copy of that available?

Senator Ervin. I will make a xerox copy of it. It had some monstrous things in it.

Mr. Hanley. Contrary to your experience, I reflect on a statement made by responsible people at NSA with regard to the number of complaints or unpleasant experiences. According to that statement, their score was negligible, stating that over a period of a couple of years, if there were four complaints, that would be about it, so there is quite a discrepancy there.

Mr. Hogan. Will the gentleman yeild?

Mr. Hanley. I yield to Mr. Hogan.

Mr. Hogan. I represent several hundred thousand government employees, and in two and a half years I do not recall ever having received a complaint of invasion of privacy by a Federal court.

Senator Ervin. I would say I have received thousands of them over the years. I have to admit they are not quite as numerous as they were because as a result of these investigations of these bills. I think they have slowed down the tempo in this field, but I do not think it is a permanent cure. There is an old adage: When the devil was sick, a monk was he, but when the devil was well, the devil of a monk was he. I think you can return to this.

Mr. Hanley. Can you tell us the name of the agency that circulated the 53 page questionnaire?

Senator Ervin. I cannot affirm it on my own motion. I

was told which agencies did it and I inquired of them. They both denied it, which is in harmony with previous experiences I have had of executive agencies.

Mr. Hanley. The questionnaire per se does not denote what agency? There is not any printed information on it?

Senator Ervin. No.

Mr. Hanley. That is rather unusual, is it not?

Senator Ervin. It is a very elaborate thing. I would imagine it has been coded for apparent insertion into the computer.

Mr. Hanley. Going back to the lie-detector, polygraph, whatever, again the nature of the questions that you have suggested are highly personal. If I were submitted to them, I would probably be somewhat dismayed, and I would assume here that the director or the leadership of that particular agency would have to assume some responsibility, or I should say total responsibility, with regard to the nature of these questions, if you are going to utilize this procedure.

You reflected upon an allegation that was made sometime back with regard to surveillance which was imposed upon a member of the Senate and a member of the House. Was that allegation documented?

Senator Ervin. Yes. John O'Brien, a former military intelligence agent, testified before the Subcommittee, and he testified positively that they had a dossier on Admiral Stevenson

Ill. who was then the State Treasurer of Illinois, and who was later elected to the United States Senate. Also, it was subsequently admitted, though it was first denied, that they had Representative Mikva under surveillance. It was later admitted that they had taken note of the fact he had attended a meeting, a rally, of which the Army intelligence disapproved. This has been documented. I get a lot of information which cannot be documented because people fear reprisals, economic or political reprisals.

I got information the other day in the form of a letter from a man who said he was a former Army intelligence agent, who stated that they had a six-page dossier on another United States Senator, whose name I will not mention.

The people who give it to me are unwilling to stand up in public and testify.

Mr. Henley. The people did provide you with a name?

Senator Ervin. Yes, they gave me the name and told me in what activities this particular Senator was involved.

Mr. Henley. Which agency had this?

Senator Ervin. This was Army intelligence.

I might state that several years ago, Representative Morris conducted hearings on the polygraph use, and there was a lot of information in his hearings, as I recall, that related to the CIA in connection with the use of polygraphs. The excuse they gave for it was: "We need it because if we put a

man under the polygraph machine, if he is a homosexual, he may admit it."

Frankly, I did not believe it. I have tried to interrogate people many times. I have not found a great tendency on the part of many people to admit their misdeeds.

Mr. Hanley. Where the applicant for employment willingly submits to this procedure, the individual, in his initial orientation, is advised by the agency that he or she will have to submit to certain tests or procedures because of the nature of the activity of that agency. The person agrees to do this. Have we then accommodated the constitutional factor here? Or, in your judgment, does this remain a problem?

Senator Ervin. I think if they require it -- I understand this is flat prohibition. These activities are prohibited, and the question of whether a man would waive them is something I am not prepared to speak on at the moment. I am inclined to think an absolute prohibition upon the action, because otherwise they could nullify a law like this by merely saying: "You have got to answer." That would be a coercion.

Mr. Hanley. I believe weighing heavily on the minds of all of us, and certainly as it has weighed heavily on your mind, we are concerned with the responsibility of these three agencies, national security, and domestic intelligence, so for these reasons we certainly want to examine both sides of the coin and, hopefully, ultimately make judgment which is appropriate

to the national interest. With that, I had better defer to my colleague and fellow committee member, Mr. Hogan.

Senator Ervin. I would like to say I share your concern about these three agencies. While the FBI is totally excluded by my bill, I think my bill takes care of any valid objections that the CIA or NSA has. If the FBI should be included, it would be taken care of in a like manner.

Mr. Hogan. Senator, welcome to the committee. Is it your feeling that the individual citizen has a right to government employment?

Senator Ervin. No.

Mr. Hogan. Why should the Federal Government not have the same right, in recruiting and hiring its personnel, that the private industry has, where psychological tests are very common?

Senator Ervin. I think we have more power over the Federal Government. The Constitution puts limitations upon the Federal Government it does not put on private citizens. First Amendment rights are only an enforcement against the government strictly speaking.

Mr. Hogan. We have honed in today most exclusively on the sensitive security type agencies, but I am concerned about other things throughout the entire government. This committee is being asked by the air controllers who are in Federal Government to give them early retirement because of the emotional and psychological pressures that are brought to bear upon them in

the performance of their duties. Do you not think it is a reasonable exercise for a government agency to give him any test, when hiring a commoiler, to see if he can do this job?

Senator Ervin. Yes, they can give him any test except they cannot ask him about his relationship to other members of his family or his attitude toward matters of religion or his attitude toward matters of sex.

Mr. Hogan. That leads me into another question. Do you not think it is a reasonable exercise on the part of the U.S. Bureau of Prisons to ask a prison matron whether or not she is a lesbian or whether or not a prison guard is a homosexual?

Senator Ervin. Apart from the question of might, I think it would be an exercise in futility. I do not think a lesbian is going to admit, when she is seeking employment, that she is a lesbian.

Mr. Hogan. That begs the question. Under your bill, would not the U.S. Bureau of Prisons be prohibited from determining whether a person is a homosexual or lesbian, from having homosexuals and lesbians in prisons?

Senator Ervin. Not at all. They could determine from any other source on earth, not from the applicant, whether they are a homosexual or a lesbian.

Mr. Hogan. Not from a psychological test?

Senator Ervin. No.

Mr. Hogan. I would submit that that is the best way if the

field of psychology has any validity at all.

Senator Ervin. I have been engaged in and hearing people interrogating and interrogating for half a century, and I have never yet heard a man admit that he was a homosexual or a woman admit she was a lesbian.

Mr. Hogan. I understand that, but if we concede any kind of efficacy to the field of psychiatry and psychology, I am not an expert on this, but there are various kinds of psychological testings, after years and years of experience in this field, which do indicate those kinds of proclivities on the part of individuals. I think -- apparently, you do not -- that this is a reasonable exercise of the selectivity process of the government, hiring prison guards, to determine whether they are lesbians or homosexuals.

Senator Ervin. This bill provides that a psychiatrist can ask questions, those questions, if a person's mental state is in question, and I would say any person who is a homosexual or a lesbian, his mental state is in question, to my mind.

Mr. Hogan. Is it proper for the Federal Government to have a psychiatrist on the Board when they interview applicants?

Senator Ervin. I think they should be trained in psychiatry and psychology, and the evidence before my subcommittee indicates they were given by general run-of-the-mill government employees with no special competence.

Mr. Hogan. The Senator indicated that those who use the

polygraph have very little experience. That has not been my observation. I think the polygraph operators generally are very experienced, and I think we ought to get from the agencies which use them -- and they are limited -- the kind of background experience that the examiners who use those devices have, what their qualifications are, and similarly in the area of psychological testing.

Mr. Manley. The Committee will adhere to the suggestion offered by Mr. Hogan.

Mr. Erasco. I want to welcome you this morning, Senator. Notwithstanding the fact that this is obviously a most controversial issue, I think you have notched out for yourself a most enviable position in history, leading the fight in this matter, and obviously bringing a most difficult disenchanting question before the public. I appreciate also your frustration in finding from time to time that it is most difficult to get consensus on this kind of thing.

I kind of suspect your detent as to why the legislative branch was exempt is the same kind of attitude that most of the Federal agencies take; namely, I, as a representative of a particular Congressional district, want to make sure that the people on my staff are not going to do anything overtly that would embarrass me. I think probably what we are really dealing with is a long kind of philosophical approach, in which the Federal Government has always felt that the Federal

force in whatever area was a decrease kind of force, and they wanted to make that particular force the most efficient, the most attractive, and the best force to deal with the public. I assume that this is why we have gotten so this area.

I agree with you that in many cases the questions that are being asked by some of the less sensitive agencies -- I was very distressed when Congressman Hutchinson spoke about a test concerning cigars, and I will have to take a look at that one before I continue smoking.

In any event, as the Chairman indicated, and Mr. Hogan, one of the difficult things -- at least I find -- is the question of the three agencies that are involved in surveillance and security, whether or not they should be included or excluded from the provisions of this bill.

I appreciate things like lie-detectors, having practiced law itself, that they are not admissible and they are not accurate, but I think that sometimes people on different occasions have given them some things. As a prosecutor, I found that the defense attorneys would come in and offer that their client be subjected to this, and I found that on occasions in certain kinds of cases -- I am limiting this to certain circumstances, and that is probably the difficulty today -- there might be an agreement if the lie-detector test, whatever it was worth, if it proved negative it would be admissible. If it proved positive, we would be right back to where we started.

saw some people as defendants who had distinct benefits from that.

Senator Ervin. The psychological testing, this bill does not put any limitation whatever upon the use of lie-detector tests, except in three specific areas.

Mr. Brasco. Getting back to the security agencies, having had 10 years of experience, I must say on both sides of the fence -- with the Legal Aid first and then with the District Attorney's office -- there was a distinct feeling, and I think with some justification, on the part of the sensitive agencies, that it is important to know some of these questions. I am not so sure about the socks and the cigars and the number of shirts you have, but I think it is important sometimes to know.

Let me make it more specific. When I was involved with the Assistant Chief of the Rackets Bureau, I liked to know whether or not some of the people, when we were doing gambling investigations, were frequenting certain places where there might be gambling operations; I would like to know whether or not they had a yen for gambling themselves, and maybe what their attitude was with respect to that particular problem; I would like to know, for instance, with great interest, if a guy was making $7,000 or $8,000 a year, if he was driving around in a Cadillac and spending $10,000 a year over and above what he earned.

I think these are the problems -- at least in my opinion --

that we have to deal with in these agencies. While individually one test may be insignificant and not worthwhile, a compilation of tests might be able to make an agency more capable of fulfilling its mission.

I appreciate that there are always going to be complaints, but it seems to me that particularly in the security areas, it is most important to them to keep up the morale of their own employees. I do not know a heck of a lot about the CIA, but I kind of suspect that when they get someone who defects from another country, it is only because that individual defector feels he was not treated fairly or has some particular gripe against the agency he was working for, and that is why he decides to try a new employer. I think it would be most important for the sensitive agencies to keep up the morale. It is unfortunate from time to time, as you very capably documented, that individual cases come up which belie what I am saying, and what is probably the general rule in this area; but I am just wondering whether or not individual cases, as an attorney, make the best law; whether or not the battles really should be between the broad spectrum of what is going on as opposed to a small number of people complaining about something that they do not agree with.

That was not a question; it was just an observation, but like you, I share this deep concern about this question of

privacy; but again, as wise and as practical as you are in your

testimony and in your statements, you appreciate that there are obviously some balances here that have to be discerned; otherwise we may get to a point where we are defeating what we are trying to accomplish.

Senator Ervin. Yes, when you get in an area like this, you have got to try to balance what appear to be competing or conflicting interests.

Mr. Brasco. I would rather listen to you than to myself. It is very delightful.

Mr. Hanley. Mr. Wilson.

Mr. Wilson. Senator, I want to congratulate you on your testimony again. You have always been so thorough and so knowledgeable on this subject, and it was through hearing you the first time that I became interested in the field. I think you have accomplished a great deal. A lot of the departments have corrected many of the things that they were doing wrong before.

Do you still feel that we should have legislation to prevent them from going back to their old habits again?

Senator Ervin. Yes, because, as the Supreme Court of the United States said, government has a habit of repeating things, returning to things as practiced in the past. We have one agency that issued questionnaires which called on people about their outside activities and even whether they belonged to churches. They had a notice on the questionnaire: "You have to

return this in three days."

Mr. Wilson. I appreciate the problem. There are fewer letters coming through to members of Congress, but whether they are just a handful, it is still important enough to ensure the constitutional rights of the Federal employees are not affected. This question came up about trying to identify questionnaires by name. The NSA brought one up and it had no name on it.

Senator Ervin. I am not very positive -- it has been sometime since I looked at them -- but these psychological tests, it is not ordinarily disclosed on the face of them.

Mr. Wilson. Are we going to get a set of psychological questionnaires?

Mr. Hanley. It is hereby directed.

Mr. Wilson. It is interesting to see how many are identified by agency. The only other thing: There is still so much difference between the House and Senate in their attitude towards legislation. The Senate can get tied up in days and days and weeks and weeks of testimony or debate. Of course, they have different rules than we do, but over things that can go through the House quite simply -- I think the feeling of this subcommittee on this bill is going to be quite controversial, and it is going to be quite difficult to compromise on it. It is something that you have passed through the Senate quite easily. You have got the support of Republicans,

Liberals, Conservatives, and yet once you exempted the FBI, you had some pretty good lobbying obligations. You took care of the principal objections.

Senator Ervin. I might say about the CIA, when this bill passed the first time, they had five or six agents sitting up in the gallery, coming down and calling the Senators on to the floor. I thought that maybe there was one investigation that the FBI ought to conduct, and that was whether those gentlemen in the gallery were violating a law by trying to influence legislation that way.

Mr. Wilson. We have this two year turn, which puts the fear of God in many members of the House. We have more sacred members, I am afraid, that we are responsive to. I am pleased to associate myself with you.

Senator Ervin. I want to reiterate what I said a while ago, that it would not have been possible, in my judgment, to have continued on without your testimony.

Mr. Hanley. Mr. White.

Mr. White. Senator, I think you are on the right track but I am not sure that you are in the right frame. I think you could accomplish everything you are seeking to do if you had an independent board that could prescribe questions that could be used in any agency, and I include Congress. I do not believe doing anything to agencies that we cannot do ourselves. I know that there are Congressmen who have used

psychological tests. I note that in your bill, you exempt employees of the Census Bureau from answering census forms. You have to if you read the language here.

Senator Ervin. I would like to see that.

Mr. White. It says that no employee of an agency can answer as to race -- we have that in every census -- or source of funds or income. Do you recall in the census forms that we submitted this last time, they had sources of income, income brackets, and race included in those forms? That means that those employees of the Census Bureau could not answer those forms under this bill that you have. I could show you other problems.

Senator Ervin. I think when you fill out a census form, you are filling out something for statistical purposes. The Census Bureau uses the information it gets for statistical purposes.

Mr. White. That is not what your language says here.

Senator Ervin. We have got to take into consideration the people to which a law is directed. I would not object to putting an amendment in there that employees of the Census cannot answer questions of that character.

Mr. White. You say it is unlawful for any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears.

This would include soldiers. If you get into a war with a foreign nation, is it not important to know the national origin of the troops you are going to send to fight? In the last war, we know that certain persons were not sent to fight people in that originating country. You have to have this information if you are going to safeguard the troops on the front.

Senator Ervin. I think this last proviso, that a soldier has engaged in activities violating the national security --

Mr. White. But you do not know that.

Going further, there are some agencies that have handwriting analysis experts. Would you, by your bill, then eliminate handwriting experts, sir? When they analyse handwriting, by force, they have to determine preconditions of the psychology, hysteria, which is based in sexual background --

Senator Ervin. If I may go back a minute, this bill alone applies to people who are serving or seeking employment in the Federal agencies. I do not think it would exempt them from any law like the census law.

Mr. White. I am now talking about the handwriting analysis expert. You would eliminate him if you did not allow him to study some of the basic exposes of his particular handwriting, and you say that you cannot use a psychological test that may be based on sexual impulses. That is why I say you should have a prescribed question instead of having a blanket question.

Senator Ervin. I would like to go back to the question about soldiers.

It says: "Nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States." And I think a soldier is certainly engaged in activities relating to the security of the United States.

Mr. White. You have also related the availability of knocking him out of the ranks and putting him into a language MOS, and many were done in World War II.

Senator Ervin. Does that not relate to national security?

Mr. White. You do not know until you have asked the question. That means that you have to ask the question of everybody. You say that you can get information from other sources.

Senator Ervin. The handwriting analysis, I think you can write about everything on the face of the earth, except three things.

Mr. White. That is part of the handwriting analysis. You said that if they needed to know some information about a person, they could go to a third person -- their neighbors -- to get that information, and I regard that as a greater invasion of privacy than asking a person a response

to a member of the committee, saying you could get it from any other source. Would it not be a greater safeguard of invasion of privacy to ask the person directly than to go snooping around the neighborhood and creating the neighbors to ask questions about why this man is being investigated?

Senator Ervin. I do not see any invasion of privacy.

Mr. White. I certainly do.

Senator Ervin. We have a different definition.

Mr. White. If I knew my name was being questioned by some investigative agency about my personal habits, I would hit the ceiling. I would far rather they come to me and ask me directly. That is the point I am trying to make.

Senator Ervin. On that interpretation of privacy, it would be improper for the I.A. to propound a question of the witness concerning the defendant's case.

Mr. White. Whoever does the hiring in your office, what are the questions that are asked when somebody applies for work? Do they ask if they have any children?

Senator Ervin. Frankly, I do the hiring. I usually ask them where they are from, where they have been to school.

Mr. White. Do you ask them if they are married?

Senator Ervin. I usually know that in advance.

Mr. White. Do you have that on a form, on a resume?

Senator Ervin. I do not have it in a form.

Mr. White. You must know, sir, whether they are married

or not?

Senator Ervin. I have never hired anybody that I did not know personally.

Mr. White. Under your bill, you could not even ask if they were married.

Senator Ervin. Yes.

Mr. White. You say any relationship with family. You cannot ask if they are married or if they have children.

Senator Ervin. Yes.

Mr. White. But you say no, sir. That is why I say prescribed questions would be far better than making a blanket bill, which would create all kinds of problems.

Senator, I appreciate your answering the questions I have asked you. I think we are all trying to strive for some protection for invasion of privacy, but I do not think we want to --

Senator Ervin. I make a distinction between the word "status" and the word "relationship". Relationship means, to me, it is not the blood relationship, your marriage relationship.

Mr. White. Did you define that in your bill?

Senator Ervin. I do not think that is necessary.

Mr. White. I think marriage is a relationship, and that would prohibit it.

Senator Ervin. It is a status, but relationship is on what kind of terms do you live.

Mr. White. I think you need to spell it out if you are

going to give guidance, and you are also prescribing a violation and a law-suit for individuals against any one of the express words of this bill if it becomes enacted. Thank you.

Mr. Hamley. Senator, again our deep appreciation to you for your time and testimony this morning. If I can refer just once again to the exclusion possibility of the three agencies we have discussed this morning, it is an interesting factor to note that though the activities of this subcommittee have been quite well publicized, up to this point we have not had a single complaint from any employee of either of the three agencies, which transmits some sort of message. Perhaps as we proceed with this activity, we may become aware of people whose Constitutional privilege has been trampled on; but for the record, up to this point, we have not had the first employee come forth with a complaint that his or her Constitutional right has been jeopardized.

Senator Ervin. I seriously doubt whether you are going to find them, because most people are not quite courageous enough to put themselves in opposition to an agency. That is one thing about the First Amendment. You do not need the First Amendment for brave people. I have had hundreds of letters, and I have been receiving them because I do not disclose the names of those people, and most of them are very reluctant to testify.

None of the executive agencies want this. None of the

departments what any limitation upon their own privacy.

Mr. Wilson. Mr. Chairman, on this question of the three agencies that we have made reference to -- we are not going to come to any hasty decision -- I think we ought to study the Senator's bill and my bill. There are four distinctions that are made. We went back to his original bill and we do not have the exception for the FBI in there, but there are four distinct places that provide exceptions, that involve the security of the country or the sensitivity of the work that is done by those agencies. I do not think we should kow-tow too much to them because of their vainness, that they think they are doing something that gives them some special privilege. None of us wants to interfere with the importance of the job they are doing for the country, but I do not think they should automatically come in and say they are doing a special job and we should ignore their employees for that reason. Let us put what necessary exceptions that are needed, but if we are going to consider this, let us not just turn over the bill to them.

Mr. Hanley. It certainly is not my intent that we do anything automatically. We are going to be very deliberative. We are going to evaluate both sides of the coin and, hopefully, come with the answer that best suits the Federal employees' problem, best suits the national interest. We certainly will be going in depth on Mr. Wilson's legislation, Senator Ervin's legislation. We will be giving a great deal of consideration

to the volumes of testimony and work that you have accomplished in this regard. Hopefully, working together we can come up with a piece of legislation that will serve the purpose and certainly not in any degree jeopardize the national security of our nation. Again, our deep appreciation for your time.

Senator Ervin. I certainly appreciate the very courteous hearing and the very penetrating questions.

Mr. Hanley. With this, the Committee will adjourn until Monday morning.

(Whereupon, at 12:40 p.m., the Subcommittee was adjourned.)